IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3430 OF 2005

Ashok Ramesh Dedhia. ... Applicant.
Versus.
State of Maharashtra. ... Respondent.

Ms.Anjali Iyer for the Applicant.
Shri A.S.Gadkari, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 14th June, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The Applicant is named as accused in offence punishable under section 376(2)(9) of the Indian Penal Code. The case of the prosecution is that the prosecutrix is a lady aged 30 years having two small children. The prosecutrix is working as a maid servant. The offence has allegedly taken place late in the night on 2nd June 2004 after 11.45 p.m. The F.I.R. has been registered on 3rd June 2004 at 11.55 a.m. The Applicant along with 7 other persons are alleged to have committed forcible sexual intercourse with the prosecutrix. In the F.I.R. detailed description of the accused has been given by the prosecutrix.

2. The learned Counsel appearing for the Applicant submits that the charge sheet has been filed long back. She placed reliance on the order dated 20th April 2005 passed by this Court in Criminal Application No.2318 of 2005 by which the co-accused Surajbhan was ordered to be released on bail. She submitted that while granting

bail in favour of the said Surajbhan this Court observed that the test identification parade was held 24 days after the arrest. The learned Counsel pointed out that in case of the Applicant also test identification parade was held 24 days after the Applicant surrendered. The learned Counsel therefore submitted that the Applicant is entitled to claim parity. Apart from this submission, the learned Counsel submitted that medical certificate shows that there were no external injuries on the person of the prosecutrix. She submitted that the age of the Applicant is only 20 years. She therefore submitted that a case is made out for grant of bail.

3. The learned A.P.P. Shri Gadkari pointed out that bail was granted to the co-accused by this Court as test identification parade was found to be defective. He submitted that in the present application that is not the case. He pointed out that the observation made by the learned Sessions Judge in paragraphs 6 and 7 of the order by which the bail application of the Applicant was rejected. He submitted that considering the gravity of offence, the Applicant may not be enlarged on bail.

4. I have considered the submissions. It is true that in order dated 20th April 2005 this Court has observed that there was delay in holding test identification parade. However, perusal of the order shows that this

Court came to the conclusion that the basic requirement of conducting identification parade was not observed as age of the Applicant before the Court was 45 years and the dummies on the other hand were of different ages ranging from 20 to 36 years. A perusal of the said order shows that as the identification parade was found to be defective, the Applicant concerned was ordered to be enlarged on bail. However, in the case of the Applicant there is nothing on record to show that there is any flaw in identification parade in which the prosecution identified the Applicant.

5. The learned Sessions Judge has noted that the material produced before him shows that there were semen stains on the undergarments of the prosecutrix as sell as on the cloth of the prosecutrix. The learned Judge observed that the incident occurred in the mid-night and immediately in the morning F.I.R. is registered giving detailed description of the 8 unknown accused.

6. The learned Sessions Judge while considering the case of the Applicant has accepted the explanation regarding absence of external injuries on the person of the prosecutrix. As pointed out earlier, the Applicant is not entitled to parity. Hence the Application is rejected.

Judge.